

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LABRE LOPEZ,	:	1:16-cv-1977
	:	
Plaintiff,	:	
v.	:	Hon. John E. Jones III
	:	
SPRINGETTSBURY	:	
TOWNSHIP, <i>et al.</i> ,	:	Hon. Martin C. Carlson
	:	
Defendants.	:	

ORDER

May 2, 2017

AND NOW, upon consideration of the Report and Recommendation (Doc. 89) of United States Magistrate Judge Martin C. Carlson recommending that the Motion to Dismiss of Defendants Carroll Township and Ben Martin (Doc. 53) be granted in part and denied in part , and noting that neither party has filed objections¹ to the R&R and that there is and that there is no clear error on the

¹ When parties fail to file timely objections to a magistrate judge's report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to "afford some level of review to dispositive legal issues raised by the report." *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that "[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b), advisory committee notes; *see also Henderson*, 812 F.2d at 878-79 (stating that "the failure of a party to object to a magistrate's legal conclusions may result in the loss of the right to de novo review in the district court"); *Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court's review is conducted under the "plain error" standard); *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court's review is limited to ascertaining whether there is "clear error on the face of the record"); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that

record, *see Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”) and the Court finding Judge Carlson’s analysis to be thorough, well-reasoned, and fully supported by the record **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 89) of Magistrate Judge Carlson is **ADOPTED** in part and **REJECTED** in part as follows:
2. Defendants’ Motion to Dismiss (Doc. 53) is **GRANTED** in part and **DENIED** in part as follows:
 - a. All claims against Defendant Carroll Township are **DISMISSED** and the Clerk of Court shall **TERMINATE** this defendant from the docket.
 - b. All claims against Defendant Martin are **DISMISSED**, with the exception of the Fourth Amendment and Fourteenth Amendment excessive force claim.
 - c. The Motion to Deem the Motion to Dismiss as Unopposed (Doc. 88) is **DENIED**.²

the court will review the report and recommendation for “clear error”). The Court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.

² We note that the Plaintiff filed objections to this R&R (Doc. 114) disputing that the motions to dismiss were unopposed. We note that Plaintiff does oppose the various motions to dismiss that are or were pending in this case, thus we shall deny the Motion to Deem the Motion to Dismiss

3. This matter is **REMANDED** to Magistrate Judge Carlson for all further pre-trial management.

s/ John E. Jones III
John E. Jones III
United States District Judge

as Unopposed. Further, we note that the Magistrate Judge engaged in a full merits analysis of the Motion to Dismiss at issue in this R&R.